

REMARKS

This is a full and complete response to the Office action dated December 11, 2007.

All comments and remarks of record are herein incorporated by reference. Applicants respectfully traverse these rejections and all comments made in the Office Action. Nevertheless, in an effort to expedite prosecution, Applicants provide the following remarks regarding the cited references.

DISPOSITION OF CLAIMS

Claims 30-32, 38-42 are pending in the application. Claims 30-32 have been amended for clarification and in accordance with Examiner's suggestions. As the amendments are made with respect to form Applicants respectfully submit that such amendments can be entered according to 37 CFR §1.116. No new matter has been added.

IN RESPONSE TO THE OFFICE ACTION:**CLAIM OBJECTION**

The Examiner objected to Claim 31 stating that the claim is missing "of" in (i) before "SEQ ID NO:1." The Applicants amend claim 1 to add "of" as suggested by the Examiner. Favorable action is solicited.

REJECTION UNDER 35 U.S.C. § 112, FIRST PARAGRAPH:

Claims 31, 40 and 42 stand rejected under 35 USC §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicants respectfully traverse this rejection.

Specifically, the Examiner alleges that the recitation in claims 31, 40 and 42 of "plant or yeast cell, fungi or plant which produces uncommon fatty acids" has no support in the instant specification for this language.

Applicants respectfully note that support is indeed provided in the specification. For example on page 8, lines 22-24 of the specification, the claims are generally supported by the recitation:

“Another aspect of the invention relates to the accommodation of high amounts of uncommon fatty acids in the triacylglycerol produced within a cell, by introducing a DNA sequence producing PDAT”

Additionally uncommon fatty acids are disclosed in number 4 on page 10:

“...uncommon fatty acid which is harmful if present in high amounts in membrane lipids, such as medium chain fatty acids, hydroxylated fatty acids, epoxygenated fatty acids and acetylenic fatty acids”

Moreover, throughout the specification and the originally filed claims, Applicants always recite “transgenic cell or organism”, as shown on page 8, lines 1-6:

“Further, the invention pertains a transgenic cell or organism containing a said nucleotide sequence and/or a said gene construct and/or a said vector. The object of the instant invention is further a transgenic cell or organism which is an eukaryotic cell or organism. Preferably, the transgenic cell or organism is a yeast cell or a plant cell or a plant.”

Therefore, as can be seen above “yeast cell”, “plant cell” and “plant” is disclosed along with production of uncommon fatty acids. Furthermore, “fungi” is disclosed in number 14, page 12 of the application.

On pages 11-12, numbers 12-14 the above claim is also supported directly. For example, number 12 on page 11 recites a transgenic organism can comprise the PDAT gene. Number 13 on page 12 recites that such organism can contain a gene for said uncommon fatty acid. Finally, number 14 on page 12 recites that such organisms can be fungi, plants or animals.

Thus the claim portion cited by the Examiner has full support throughout the application. Accordingly, Applicants respectfully request the above mentioned rejection be withdrawn.

REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH:

Claims 30-32 and 38-42 stand rejected under 35 USC §112, second paragraph, as failing to set forth subject matter which the Applicants regard as their invention. Applicants respectfully traverse this rejection.

1.

The Examiner asserted that claims 30-31 are confusing for the recitation of “which containing” or “which comprising.” Applicants have amended claims 30 and 31 to delete “which.” Favorable action is therefore solicited.

2.

The Examiner also alleged that claim 31 (see also claims 30, 32 and 39-41 with similar language) is indefinite for the recitation of “transforming a plant or yeast cell, fungi, or plant based on the redundancy”. The Examiner asserts that the claim is also indefinite because the plant cell is transformed and not the entire plant.

Under §112, second paragraph, the claims must particularly point out and distinctly claim the subject matter the applicant regards as his invention. This has been held to mean that the language of the claim must be such that a person of ordinary skill in the art can interpret the metes and bounds of the claim so as to understand how to avoid infringement. *MPEP* §2173.02. Furthermore, definiteness of claim language must be analyzed, not in a vacuum, but in light of (1) the content of the particular disclosure; (2) the teachings of the prior art; and (3) the claim interpretation that would be given by one possessing the ordinary level of skill in the art at the time the invention was made. *MPEP* §2173.02.

In case at hand, one of skill in the art would easily understand what is meant by the above cited claim language, including the recitation of transforming plants. The term “transforming a plant” is common “genetical” speech and is absolutely useable in patents. As an example of the state of the art, Applicants provide US Patent No. 5,641,664 to **D’Halliun et al.** (“**D’Halliun**”). As noted therein, **D’Halliun** recites “transforming plants”, as noted in the abstract as well as through the disclosure of the patent. As this is indicative of the state of the art at the time of filing, it also indicates that one of ordinary skill in the art would understand as “transforming plants.” Therefore, Applicants

respectfully assert that the claim is not indefinite, and respectfully requests the above mentioned rejection be withdrawn.

3.

Finally, the Examiner rejected claim 32 as being confusing for the recitation of “producing triacylglycerol and/or triacylglycerols” Applicants have therefore amended claims 31-32 to recite “triacylglycerol or triacylglycerols.” Favorable action is therefore solicited.

In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner is invited to directly contact the undersigned by phone to further the discussion.

The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 14-1437.

Conclusion

Having addressed all issues set out in the Office action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

Respectfully submitted,
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